

CHAPTER NO. 1024

HOUSE BILL NO. 2803

By Representative Kisber

Substituted for: Senate Bill No. 2973

By Senators Gilbert, Kurita, Jordan, Harper

AN ACT to amend Tennessee Code Annotated, Title 4; Title 38; Title 39; Title 50 and Title 56, relative to employment.

WHEREAS, The Worker's Compensation Reform Acts of 1992 and 1996 enacted significant reforms which are still being implemented; and

WHEREAS, The Special Joint Committee of the General Assembly on Worker's Compensation has monitored the implementation of the reform legislation and its impact on the worker's compensation system in Tennessee; and

WHEREAS, The Special Joint Committee of the General Assembly on Worker's Compensation recommends certain statutory changes; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-6-203(a), is amended by deleting the language "from the time" and by substituting instead the language "from the latter of the date of the last authorized treatment or the time".

SECTION 2. Tennessee Code Annotated, Section 50-6-203(a), is amended by adding the following language immediately after the last sentence of the subsection:

Where a workers' compensation suit is brought by the employer or his agent and the employer or agent files notice of non-suit of the action at any time on or after the date of expiration of the statute of limitations, either party shall have ninety (90) days from the date of the order of dismissal to institute an action for recovery of benefits under this chapter.

SECTION 3. Tennessee Code Annotated, Title 50, Chapter 6, Part 2, is amended by adding the following as a new section to be appropriately designated:

Section ____.

(a) The Department of Labor shall develop a statistical data form for collecting data relevant to assessing the workers' compensation system. In developing or altering the form, the department shall seek written comment from the advisory council on workers' compensation and the administrative office of the courts. The commissioner shall submit the proposed form to the Special Joint Committee on workers' compensation, together with any written comments of the advisory council on workers' compensation and the administrative office of the courts, prior to submission of proposed rule to the Attorney General and Reporter. The initial rule shall be submitted to the committee prior to October 1, 1998. The Commissioner of Labor shall promulgate the form by rule pursuant to Tennessee Code Annotated, Title 4, Chapter 5, on or before October 31, 1998.

(b) The completed form shall be required to be filed in every workers' compensation case at the conclusion of the case and shall be filed with the clerk of the court (in which the case is pending) contemporaneously with the final order. An order of a court is not final until the statistical data form required by this section is fully completed and filed with the clerk of the court.

(c)(1) The clerk of the court shall forward to the Director of the Workers' Compensation Division of the Department of Labor on or before the tenth day of each calendar month all workers' compensation statistical data forms filed with the clerk during the preceding calendar month.

(2) In addition to the fees provided in Title 8, Chapter 21, Part 4, every clerk of the court shall be entitled to a fee of one dollar (\$1.00) for each statistical form filed with the clerk.

(3) The fee associated with the filing of the statistical data form shall be a part of the court costs accruing to the clerk and shall be collected in the same manner and in addition to the other costs in the case.

(d) In cases involving a workers' compensation settlement which is submitted to the Department of Labor for approval, the statistical data form required by this section shall also be completed and submitted to the Department of Labor at the time of the submission of the settlement for approval. A settlement approved by the Department of Labor shall not become final until the statistical data form required by this section is fully completed and received by the Department of Labor.

(e) It shall be the responsibility of the employer or his agent to complete and file the form required by this section, contemporaneously with the filing of the final order or settlement. The employee and any agent of the employee are required to cooperate with the employer in completing this form.

SECTION 4. Tennessee Code Annotated, Section 50-6-415, is amended by adding the following as a new subsection to be appropriately designated:

(c) The Commissioner of Labor shall enforce requests pursuant to this section in the same manner and with the same authority as the Commissioner of Commerce and Insurance possesses with respect to violations of this part and Title 56. The commissioner shall also notify the principal corporate office of any insurer of any refusal to comply with such requests. The commissioner's enforcement authority under this subsection applies only to the commissioner's efforts to obtain relevant data as provided in subsections (a) and (b) of this section.

SECTION 5. Tennessee Code Annotated, Section 50-9-103(4), is amended by deleting the item and by substituting instead the following:

(4) "Drug" means any controlled substance subject to testing pursuant to drug testing regulations adopted by the United States Department of Transportation. A covered employer shall test an individual for all such drugs in accordance with the provisions of this chapter. The Commissioner of Labor may add additional drugs by rule in accordance with § 50-9-111;"

SECTION 6. Tennessee Code Annotated, Section 50-9-103(15), is amended in the third sentence of the item by deleting the language "a public" and by substituting instead the language "any".

SECTION 7. Tennessee Code Annotated, Section 50-9-105(a)(11), is amended by deleting the language “the right” and by substituting instead the language “any right”.

SECTION 8. Tennessee Code Annotated, Section 50-9-106(a)(2), is amended by adding the following language at the end of the subdivision:

A written record shall be made of the observations leading to a controlled substances reasonable suspicion test within twenty-four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the covered employer pursuant to Section 50-9-109 and shall be retained by the covered employer for at least one (1) year.

SECTION 9. Tennessee Code Annotated, Section 50-9-106(a)(3), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(3) ROUTINE FITNESS FOR DUTY DRUG TESTING. A covered employer shall require an employee to undergo drug or alcohol testing if, as a part of the employer's written policy, the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination or is scheduled routinely for all members of an employment classification or group; provided, however, a public employer may require scheduled, periodic testing only of employees who:

- (A) Are police or peace officers;
- (B) Have drug interdiction responsibilities;
- (C) Are authorized to carry firearms;
- (D) Are engaged in activities which directly affect the safety of others;
- (E) Work in direct contact with inmates in the custody of the Department of Correction; or
- (F) Work in direct contact with minors who have been adjudicated delinquent or who are in need of supervision in the custody of the Department of Children's Services.

This subdivision does not require a drug or alcohol test if a covered employer's personnel policy on July 1, 1998 does not include drug or alcohol testing as part of a routine fitness-for-duty medical examination. The test shall be conducted in a nondiscriminatory manner. Routine fitness-for-duty drug or alcohol testing of employees does not apply to volunteer employee health screenings, employee wellness programs, programs mandated by governmental agencies, or medical surveillance procedures that involve limited examinations targeted to a particular body part or function.

SECTION 10. Tennessee Code Annotated, Section 50-9-106(a)(5), is amended by deleting the language “the covered employer may” and by substituting instead the language “as defined in Title 50, Chapter 3, and the rules promulgated thereunder, the covered employer shall”.

SECTION 11. Tennessee Code Annotated, Section 56-47-102, is amended by adding the following as a new item to be appropriately designated:

() “Premium avoidance” means any intentional material misrepresentation by an employer of any or all of the four (4) premium determinants. The determinants are employee job classifications, amount of payroll in each classification, geographic location of insured operations, and history of past losses. Intentional misrepresentation of each of these items can affect the total premium charged by an insurer to a worker’s compensation risk.

SECTION 12. Tennessee Code Annotated, Section 56-47-105, is amended by deleting the section in its entirety and by substituting instead the following:

Violations of Section 56-47-103 are to be valued according to the provisions of Section 39-11-106(a)(36) and punished as theft under Section 39-14-105.

SECTION 13. Tennessee Code Annotated, Section 50-6-121(c), is amended in the second sentence by deleting the language “January 1” and by substituting instead the language “May 1”.

SECTION 14. Tennessee Code Annotated, Section 50-6-225(e)(7), is amended by deleting the language “September 1, 1998” and by substituting instead the language “September 1, 2006”.

SECTION 15. Tennessee Code Annotated, Section 50-6-402(b), is amended by deleting the fourth sentence of the subsection in its entirety and by substituting instead the following:

The commissioner shall approve, disapprove or modify the filing within ninety (90) days of receiving the filing. If the commissioner modifies the filing, such modification shall be within the range established by the recommendation of the rate service organization in its filing and the recommendation of the advisory council on workers’ compensation. In instances when the commissioner modifies the filing, the rate service organization shall develop a plan that reflects the commissioner’s modification, unless the organization appeals the modification pursuant to Section 56-5-308.

SECTION 16. Tennessee Code Annotated, 56-5-308, is amended by deleting subsections (a) and (b) and substituting instead the following as new subsections (a) and (b):

(a) Basis for Disapproval. The commissioner shall disapprove a rate if:

(1) The commissioner finds that the rate is excessive, inadequate or unfairly discriminatory; or

(2) In the case of an advisory prospective loss costs filing, the commissioner finds such filing does not reasonably reflect projected losses, including loss adjustment expenses. For an advisory prospective loss costs filing the commissioner may also modify such filing as permitted by Section 50-6-402(b).

(b) (1) Disapproval Procedure. If the commissioner disapproves or modifies a filing, the commissioner shall issue a written order specifying in what respect that the rate proposed in such filing is excessive, inadequate or unfairly

discriminatory or otherwise fails to meet the requirements of this part. The person making such filing shall be given a hearing upon written request made within thirty (30) days after the disapproval or modification order.

(2) If the commissioner disapproves rates already in effect, the commissioner shall issue such an order only after a hearing held on not less than twenty (20) days' written notice to the insurer or rate service organization which made the filing. The order shall be issued within fifteen (15) days after the close of the hearing and shall specify in what respects the rates fail to meet the requirements of this part. The order shall also state when, within a reasonable period of time, but not less than forty-five (45) days, the further use of such rate in contracts of insurance made thereafter shall be prohibited. The order may include a provision for premium adjustment for policies issued, renewed or nonrenewed after the effective date of such order. In disputes concerning a multiplier, the insurer shall have the burden of persuasion that the commissioner's disapproval, modification, or failure to approve was inappropriate.

SECTION 17. Tennessee Code Annotated, Section 56-5-306(c), is amended by deleting the language "of this section," in the third sentence thereof and by substituting instead the language "of §56-5-322,".

SECTION 18. Tennessee Code Annotated, Title 50, Chapter 9, Part 1, is amended by adding the following language as a new, appropriately designated section:

§50-9-1___. A temporary employment agency shall not be required by rule, regulation or policy of the Department of Labor to implement a drug-free workplace pursuant to this chapter.

SECTION 19. Tennessee Code Annotated, Section 56-5-320, is amended by adding the following language as a new appropriately designated subsection:

() For workers' compensation insurance provided in the voluntary market, no schedule rating plan shall limit its application to any risk based on premium size or eligibility for experience rating; provided that the application for such plan to any individual risk shall not result in the premium for such risk being less than the classification minimum premium established for workers' compensation insurance.

SECTION 20. (a) Tennessee Code Annotated, Section 50-6-121(a), is amended in the second sentence by deleting the language "selected by the six (6) appointed members" and by substituting instead the language "who shall be the State Treasurer or the Treasurer's designee".

(b) Tennessee Code Annotated, Section 50-6-121(a), is further amended by deleting the language:

"The Chair shall have an academic background in research, statistical analysis, insurance or related fields. The Chair shall vote only in event of a tie."

And by substituting instead the language:

"The Chair shall preside at meetings of the council and, under the general direction of the council, shall supervise the work of the staff of the council. The Chair may vote only on matters related to the administration of the council or the council's research. The Chair is not permitted to vote on any matter which

constitutes the making of a policy recommendation to the Governor or to the General Assembly.”

SECTION 21. Tennessee Code Annotated, Section 50-6-204(a)(6)(A), is amended by deleting the words “outside the worker’s community” and by substituting instead the following:

outside a radius of fifteen (15) miles from such insured worker’s residence or workplace

SECTION 22. Tennessee Code Annotated, Section 50-6-204(a)(6)(A), is further amended by adding the following at the end of the subdivision:

The definition of “community” as contemplated by this subsection shall apply only for the purposes of this section.

SECTION 23. Tennessee Code Annotated, Section 50-6-113(f), is amended by deleting the subsection in its entirety and by substituting instead the following:

(f)(1) Any person engaged in the construction industry, including principal contractors, intermediate contractors, or subcontractors, shall be required to carry workers’ compensation insurance. This requirement shall apply whether or not the person employs fewer than five (5) employees. Sole proprietors and partners shall not be required to carry workers’ compensation insurance on themselves. In addition, the provisions of this subsection shall not apply to persons building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on their own property for their own use and for which the person receives no compensation.

(2) Nothing within this subsection shall be construed to impact any person whose employment at the time of injury is casual as provided in Section 50-6-106.

(3) For purposes of this subsection, a person engaged in the construction industry means any person or entity who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down, or furnishing labor to install material or equipment for any building, highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement, or any other construction undertaking.

SECTION 24. Tennessee Code Annotated, Section 50-6-238, is amended by deleting subsection (a) and by substituting instead the following:

(a) With respect to the determination of whether to initiate or reinstitute temporary total disability benefits or medical benefits, a workers’ compensation specialist shall not be an advocate for either party, but shall decide such issues solely on the basis of the information available to such specialist without favor or presumption for or against either party. If, in light of available information, a workers’ compensation specialist determines that it is appropriate to commence or reinstitute the payment of temporary total disability benefits and/or medical benefits to an employee, then a workers’ compensation specialist may order the initiation, confirmation, or reinstitution of such benefits by an employer or the

employer's workers' compensation insurer. The specialist shall order, on a form prescribed by the commissioner of labor, that such compensation be paid.

SECTION 25. Tennessee Code Annotated, Section 50-6-238(c), is amended in the first sentence by inserting the language “, continuation or reinstitution” between the language “initiation” and “of compensation”.

SECTION 26. This act shall take effect July 1, 1998, the public welfare requiring it.

PASSED: April 29, 1998


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 18th day of May 1998


DON SUNDQUIST, GOVERNOR